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Richard Spencer  
PO Box 1676  
Whitefish, MT 59937

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
CHARLOTTESVILLE DIVISION

ELIZABETH SINES *et al.*,

Case No: 3:17-cv-00072-NKM

Plaintiffs

vs.

**SPENCER – OBJECTION TO  
MAGISTRATE'S ORDER TO STRIKE**

JASON KESSLER, *et al.*,

Defendants.

**DEFENDANT RICHARD SPENCER'S OBJECTION TO MAGISTRATE JUDGE'S  
ORDER TO STRIKE MR. SPENCER'S MOTION FOR SUMMARY JUDGEMENT**

In accordance with 28 U.S.C. §636(b)(1) and Rule 72(a) of the Federal Rules of Civil Procedure, Defendant Richard Spencer respectfully objects to Magistrate Judge Joel Hoppe's order to strike his Motion for Summary Judgement (MSJ), issued on May 19, 2021. Mr. Spencer humbly requests that District Judge Norman Moon consider this objection and, in light of the circumstances and the importance of Summary Judgement (SJ) to Mr. Spencer's defense, forgive the untimeliness of Mr. Spencer's filing and give his MSJ a hearing.

**1. Untimely Observations.** All parties are in agreement on the basic facts of this controversy. On October 19, 2020, Mr. Spencer filed his MSJ in an untimely manner. Additionally, Mr. Spencer failed to seek adequately an extension and mention his untimeliness in

1 his MSJ. Mr. Spencer acknowledges these facts, and he has apologized to the Court and to the  
2 Plaintiffs.

3 Deciding on SJ is not in Judge Hoppe's domain, and he struck Mr. Spencer's MSJ on  
4 purely technical and procedural grounds, leaving the heart of Mr. Spencer's argument entirely  
5 intact: Mr. Spencer's untimeliness "has not done serious or irreparable harm to the [litigation]  
6 process" (Response in Opposition to the Plaintiffs Motion to Strike; ECF no. 906). Indeed, Mr.  
7 Spencer's argument is more compelling now than it was six months ago, as the trial date has  
8 been reset to late October 2021.

9 Some background is important. With a trial then-scheduled for the fall of 2020, Judge  
10 Hoppe set a deadline of August 7, 2020, for Defendants to deliver their MSJ (Order November  
11 27, 2019; ECF no. 597). That June, Mr. Spencer's attorney withdrew from the process—and  
12 withdrew without filing or drafting an MSJ. With the trial delayed until April 2021 due to the  
13 COVID-19 pandemic—before subsequently being delayed again until October 2021—Mr.  
14 Spencer had an opportunity to research and draft his MSJ as a *pro se* litigant. The Plaintiffs and  
15 the Court also had ample time to respond to and decide on the matter, respectively.

16 On September 14, 2020, in a status conference call before Judge Moon, Mr. Spencer  
17 voiced his desire to file a MSJ and requested a "reasonable deadline." Mr. Spencer was under the  
18 impression that the Court was inclined to allow new motions to be filed; he failed to appreciate,  
19 however, that he was required to request formally that these deadlines be set by the Court, and he  
20 filed his MSJ a month later without doing so. The Plaintiffs immediately responded with a  
21 Motion to Strike (ECF no. 896).

22 **2. Deciding on the Exception.** Forgiving Mr. Spencer's untimeliness is a matter of  
23 judicial discretion. The Supreme Court, it should be noted, has submitted guidelines for

1 establishing “excusable neglect” and thus forgiving mistakes by moving parties. These include,  
 2 (1) whether the delay in filing was within the control of the movant; (2) the length of the delay  
 3 and the delay’s potential to affect judicial proceedings; (3) the potential of prejudice to the non-  
 4 moving party; (4) whether the moving party was acting in good faith (*Pioneer Investment*  
 5 *Services v. Brunswick Associates*, 507 U.S. 380 (1993)).

6 Mr. Spencer’s behavior meets the threshold of “excusable neglect.” (1) Mr. Spencer  
 7 voiced his desire to file his MSJ; verbally requested a deadline; and filed an effective MSJ; (2)  
 8 addressing Mr. Spencer’s MSJ will not impact the scheduling of the trial, and Mr. Spencer is not  
 9 requesting a continuance; (3) the non-moving party will not be overly burdened by responding to  
 10 this matter; (4) Mr. Spencer has apologized for his failures and is actively participating in his  
 11 defense. In light of these and other matters, Magistrate Judge Hoppe’s decision to strike from the  
 12 docket Mr. Spencer’s MSJ appears arbitrary and not a proper use of his discretion as Magistrate.

13 **3. Practical Concerns.** The reality of the situation is compelling in favor of allowing Mr.  
 14 Spencer’s MSJ to be heard. As mentioned, a month after the September status call, Mr. Spencer  
 15 filed his MSJ. With the trial date then-set for April 2021, Mr. Spencer’s filing allowed the  
 16 Plaintiffs and the Court some six months to complete the SJ process.

17 According to Rule 72 (a), “the magistrate judge must promptly conduct the required  
 18 proceedings and, when appropriate, issue a written order stating the decision.” There is no  
 19 precise definition of “promptly.” Regardless, Judge Hoppe ruled on the Plaintiffs’ Motion to  
 20 Strike some six months after it was filed. This is the reason that this matter is sent to the District  
 21 Judge now, and not in, say, November or December of 2020. Even with this pacing, the  
 22 scheduling of the trial has not been jeopardized. Plaintiffs have ample time to respond to Mr.  
 23 Spencer’s MSJ, with the trial now set for October 25, 2021. This is, in fact, a longer period of

1 time than that set aside when the trial was scheduled in 2020. Surely the Plaintiffs have at least  
2 contemplated Mr. Spencer's MSJ over the past half year, if not already drafted their Response.  
3 No undue burden is being placed on the Plaintiffs, nor any prejudice shown to them. Mr. Spencer  
4 is not requesting a continuation of the trial (nor has he ever), for, among other reasons, a  
5 continuance is entirely unnecessary.

6 **4. Judicious Charity.** Mr. Spencer's personal situation should be kept in mind. Mr.  
7 Spencer has an academic background, educated at the University of Virginia, University of  
8 Chicago, and Duke University, and has professional experience in writing and publishing. Mr.  
9 Spencer well understands the concepts of evidence, sourcing, interpretation, and argumentation,  
10 and he is thus well prepared to participate in the litigation process on its foundational level. This  
11 competency is manifest in Mr. Spencer's MSJ. Mr. Spencer was not prepared, however, for  
12 dealing with the technical and procedural matters of litigation. Put simply, Mr. Spencer is a  
13 layman and can get lost in the mechanics of the trial. Mr. Spencer is, however, endeavoring to  
14 represent himself effectively, while treating the Plaintiffs and the Court with due respect and  
15 fairness.

16 In Judge Hoppe's Order to Strike, he outlines Mr. Spencer's undisputed procedural and  
17 technical mistakes. Judge Hoppe does not suggest, however, that Mr. Spencer is acting in bad  
18 faith, attempting, say, to delay the process or befuddle the Plaintiffs. Thus Mr. Spencer's actions,  
19 regrettable as they may be, do not reach the threshold needed for a Strike. This case has already  
20 been costly and time-consuming, and Mr. Spencer is in no way incentivized to protract it further,  
21 or antagonize the Plaintiffs or the Court.

22 In the conference call in June 2020, Judge Hoppe warned Mr. Spencer that he would not  
23 continue the trial due to the withdrawal of Mr. Spencer's attorney. This is reasonable. That said,

1 as a *pro se* litigant, some kind of charity and leeway should be granted to Mr. Spencer, especially  
2 when he is acting in good faith and participating in the process.

3 If Mr. Spencer had properly requested an extension, or perhaps merely mentioned his  
4 untimeliness in his filed MSJ, would Judge Hoppe have granted Mr. Spencer the ability to file a  
5 MSJ in the fall/winter of 2020? If that were the case, then it follows that Judge Hoppe did not  
6 believe that filing a MSJ in the fall/winter of 2020 jeopardized the integrity of the trial and that  
7 he did not believe Mr. Spencer to be acting in bad faith. Surely these fundamental matters—the  
8 “big picture,” so to speak—should override concerns over Mr. Spencer’s admitted oversights.  
9 Reason and justice demand it.

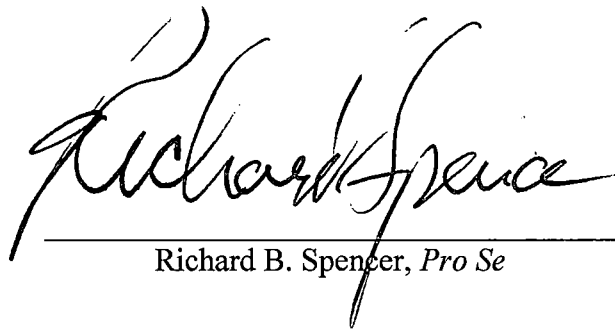
10 **5. The Pertinence of Summary Judgement.** Summary Judgement is an essential  
11 component of the civil litigation process, particularly so with regard to Mr. Spencer’s defense.  
12 The purpose of SJ is to “weed out nonlitigable cases, not to pretry and dispose of doubtfully  
13 successful ones” (*Harding v. Purtle*, Civ. No. 12010 (1969)). Mr. Spencer did not dispute the  
14 material evidence that was presented to him during his 2020 Deposition, nor is he inclined to  
15 dispute any evidence secured through the expansive Discovery process. The Plaintiffs do not  
16 have and cannot reasonably obtain evidence that Mr. Spencer harmed or attempted to harm them,  
17 or that he was part of a “conspiracy” dedicated to harming them as individuals or as members of  
18 a group or class. The Plaintiffs’ case, as is manifest in their Second Amended Complaint, rests  
19 on conclusory references (various decelerations of a “white supremacist conspiracy”), which are  
20 not supported by gathered evidence and which cannot in themselves support a cause of action  
21 (*Bell Atlantic v. Twombly*, 550 U.S. 544 (2007); *Ashcroft v. Iqbal*, 556 U.S. 662 (2009)). No  
22 gathered evidence supports the application of Count I: 42 U.S.C. §1985 (c), and Count II 42  
23

1 U.S.C. §1986, and thus the Plaintiffs lack evidence for an indispensable element in their  
2 Complaint. The Plaintiffs' case against Mr. Spencer is well deserving of being weeded out.

3 \*\*\*

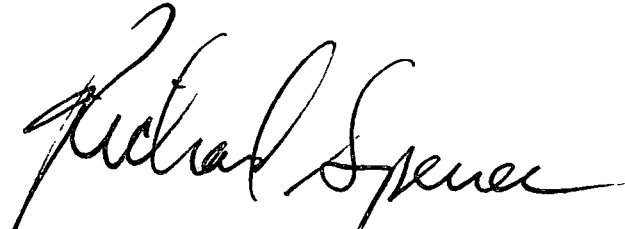
4 In conclusion, the integrity of the litigation process has not been comprised by Mr.  
5 Spencer's regrettable errors, and he is endeavoring to participate and effectively defend himself.  
6 Additionally, SJ is especially pertinent in his overall defense. With all of that in mind, Mr.  
7 Spencer humbly requests that Judge Moon exercise his sovereignty on this matter and allow the  
8 Summary Judgement process to commence.

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10  
11 The 27th of May, 2021.

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Richard B. Spencer, *Pro Se*

1 **CERTIFICATE OF SERVICE**

2 I certify that on the 27th of May, 2021, a true and correct copy of the foregoing Motion for  
3 Summary Justice was mailed to the Clerk of the Court, which will provide electronic notice to all  
4 counsel of record.

5  
6  
7  
8   
9  
10  
11  
12 Richard B. Spencer, *Pro Se*

11 I further hereby certify that on May 27, 2021, I also served the following non-ECF participants,  
12 via electronic mail, as follows:

13  
14 Christopher Cantwell christopher.cantwell@gmail.com

15 Robert Azzmador Ray azzmador@gmail.com



16 Elliott Kline a/k/a Eli Mosley eli.f.mosley@gmail.com deplorabletruth@gmail.com

17 Vanguard America c/o Dillon Hopper dillon\_hopper@protonmail.com

18 Matthew Heimbach matthew.w.heimbach@gmail.com  
19  
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23

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